RESEARCH PAPER 03/70
16 SEPTEMBER 2003

Arms Control and Disarmament (Inspections) Bill [HL]

Bill 50 of 2002/03

The 1990 *Treaty on Conventional Armed Forces in Europe* (CFE) establishes limits on heavy military equipment held within Europe. Revisions to the Treaty were decided upon in 1999 under an *Agreement on Adaptation of the Treaty on Conventional Armed Forces in Europe*, which includes an enhanced inspection regime to verify compliance by States Parties.

The *Arms Control and Disarmament (Inspections) Bill* [HL] would introduce amendments to a 1991 Act that grants visiting inspectors access rights to UK facilities.

This paper provides background on the CFE Treaty and the Agreement on Adaptation, and looks at the main provisions of the Bill. It also examines the views expressed during consideration in the Lords and in the Defence Committee's report on the Bill of April 2003. Furthermore, it includes background on the issue of private ownership and operation of military facilities and equipment.

Tim Youngs and Claire Taylor

INTERNATIONAL AFFAIRS AND DEFENCE SECTION

HOUSE OF COMMONS LIBRARY

Recent Library Research Papers include:

List of 15 most recent RPs

03/55	Unemployment by Constituency, May 2003	11.06.03
03/56	The Convention on the Future of Europe: institutional reform	12.06.03
03/57	Economic Indicators [includes article: The RPI to HICP – a new inflation measure for the UK]	01.07.03
03/58	The draft Treaty establishing a European Constitution: Parts II and III	07.07.03
03/59	UK Election Statistics: 1945-2003	07.07.03
03/60	The draft Treaty establishing a European Constitution: technical and constitutional issues in Parts I and IV	07.07.03
03/61	The *Sexual Offences Bill* [HL]: Policy Background [Bill 128 of 2002-03]	10.07.03
03/62	The *Sexual Offences Bill* [HL] [Bill 128 of 2002-03]	10.07.03
03/63	Unemployment by Constituency, June 2003	16.07.03
03/64	Parliamentary pay and allowances	16.07.03
03/65	Delivering the Decent Homes Standard: social landlords' options and progress	07.08.03
03/66	Unemployment by Constituency, July 2003	13.08.03
03/67	The *Water Bill* [HL] [Bill 149 of 2002-03]	04.09.03
03/68	The Swedish Referendum on the Euro	15.09.03
03/69	The *Northern Ireland (Monitoring Commission etc) Bill* [HL] [Bill 158 of 2002-03]	16.09.03

Research Papers are available as PDF files:

- *to members of the general public on the Parliamentary web site, URL:* ***http://www.parliament.uk***
- *within Parliament to users of the Parliamentary Intranet, URL:* ***http://hcl1.hclibrary.parliament.uk***

ISSN 1368-8456

Summary of main points

The 1990 *Treaty on Conventional Armed Forces in Europe* (the CFE Treaty) established limits on the numbers of conventional combat aircraft, tanks, attack helicopters, armoured combat vehicles and artillery pieces that could be held within Europe (from the Atlantic Ocean to the Ural mountains) by NATO and the Warsaw Pact. The Treaty is widely recognised as a cornerstone of security in Europe.[1] Compliance with the Treaty's obligations is verified by means of an elaborate inspection regime.

Under the *Agreement on Adaptation of the Treaty on Conventional Armed Forces in Europe* (the Agreement on Adaptation), which was signed in Istanbul in November 1999, revisions to the Treaty were decided upon to reflect the profound historical changes that have occurred across Europe since 1990. In addition to other revisions, the Agreement provides for an enhanced inspection regime involving a new type of inspection and an increase in the number of existing types of inspection that each state party is liable to host.

The Agreement will come into force once all States Parties have submitted their instruments of ratification. In the meantime, the 1990 CFE Treaty remains in force.

The *Arms Control and Disarmament (Inspections) Bill* [HL], Bill 50 2002-03, would amend the original *Arms Control and Disarmament (Inspections) Act 1991* (chapter 41) relating to the CFE Treaty. The Bill has two main functions:

- to grant visiting inspection teams additional rights of access to UK sites as required under the Agreement on Adaptation; and
- to confer on the Government a power to make further amendments to the 1991 Act should they be needed to implement future amendments to the Treaty.

The Agreement on Adaptation has been signed but not ratified by the United Kingdom and its NATO allies due to concerns over delays on the part of Russia in complying with its treaty obligations. The Bill paves the way for ratification and would allow the Government to proceed with ratification at the appropriate time without further parliamentary proceedings.

The Defence Committee considered the Bill in a report of April 2003 and recommended that the House should pass it. The Committee also sought a specific undertaking from the Government at Second Reading to notify the House 21 days prior to ratification, so as to give the House a further opportunity to consider the Agreement and issues related to it. The Government says it is content to give such an undertaking.

---

1 *The Treaty on Conventional Armed Forces in Europe (CFE) adapts to a new era*, FCO Focus International paper, July 2000, from http://files.fco.gov.uk/info/briefs/armedforces.pdf

CONTENTS

I Introduction

The 1990 *Treaty on Conventional Armed Forces in Europe* (the 'CFE Treaty') established limits on the numbers of combat aircraft, tanks, attack helicopters, armoured combat vehicles and artillery pieces that could be held within Europe by the North Atlantic Treaty Organisation (NATO) and the Warsaw Treaty Organisation (Warsaw Pact).[2]

Compliance with the Treaty's obligations is verified by means of an elaborate inspection regime. The provisions of the Treaty are implemented in the United Kingdom, as far as necessary, by the *Arms Control and Disarmament (Inspections) Act 1991* (chapter 41),[3] which, among other things, provides rights of entry to privately owned or operated sites so that international teams can carry out inspections.

Revisions to the Treaty to reflect the dramatic political changes that have occurred across Europe since 1990 were decided upon under an *Agreement on Adaptation of the Treaty on Conventional Armed Forces in Europe* (the 'Agreement on Adaptation'), which was signed in Istanbul in November 1999.[4] The Agreement provides for an enhanced inspection regime, involving a new type of inspection and an increase in the number of existing types of inspection that each state party is liable to host.

The *Arms Control and Disarmament (Inspections) Bill* [HL], Bill 50 2002-03, would grant visiting inspection teams rights of access to UK sites as required under the Agreement on Adaptation (referred to elsewhere on occasion as the 'Adapted Treaty'). The Bill does two things. Firstly it amends the 1991 Act so as to provide for these additional rights of entry. Secondly, it confers on the Government a power to make further amendments to the 1991 Act should they be needed to implement future amendments to the CFE Treaty. The main provisions of the Bill are covered in Section III E. The consideration of the Bill in the Lords is covered in Section III D and E.

The Agreement on Adaptation has been signed by not ratified by the United Kingdom and its NATO allies due to concerns over delays on the part of Russia in complying with its treaty obligations, particularly with respect to the presence of Russian forces in Georgia and Moldova. The Bill would allow the Government to proceed with ratification at the appropriate time without further parliamentary proceedings.

The Agreement on Adaptation will come into force once all States Parties have submitted their instruments of ratification. In the meantime, the 1990 CFE Treaty remains in force.

---

2 The full text of the Treaty on Conventional Armed Forces in Europe and related Protocols is available on the OSCE web site at: http://www.osce.org/docs/english/1990-1999/cfe/cfetreate.htm

3 The full text of the 1991 Act is at: http://www.legislation.hmso.gov.uk/acts/acts1991/Ukpga_19910041_en_1.htm

4 The full text of the Agreement on Adaptation is available on the OSCE web site at: http://www.osce.org/docs/english/1990-1999/cfe/cfeagree.htm

II The Treaty and the Process of Adaptation

A. Treaty on Conventional Armed Forces in Europe (CFE)

The *Treaty on Conventional Armed Forces in Europe* has its origins in the 1970s, when NATO and the Warsaw Pact began discussing limitations, or Mutually Balanced Force Reductions (MBFR), on the number of conventional forces stationed in Europe.[5] Detailed treaty negotiations commenced in Vienna in March 1989, involving the then 16 members of NATO[6] and the seven (later six) countries of the Warsaw Pact.[7]. The resulting CFE Treaty was signed in Paris on 19 November 1990.[8]

The Treaty, the most comprehensive arms control agreement in history, provided a means of establishing a military balance between the two groups of states and served two main purposes. Firstly, it was an arms reduction treaty, which mandated States Parties collectively to decommission more than 50,000 items of heavy weaponry and equipment. Secondly, it served as a conflict prevention treaty aimed at increasing transparency, building confidence, and reducing tension by preventing potentially provocative and destabilising concentrations of military forces.[9] The Treaty remains in force, pending the entry into force of the Agreement on Adaptation, and its provisions are legally binding on all States Parties.

There are currently 30 States Parties to the Treaty: Armenia, Azerbaijan, Belarus, Belgium, Bulgaria, Canada, Czech Republic, Denmark, France, Georgia, Germany, Greece, Hungary, Iceland, Italy, Kazakhstan, Luxembourg, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Russia, Slovakia, Spain, Turkey, Ukraine, United Kingdom, and United States of America.

1. Core Provisions

Five categories of major weapons and equipment systems, referred to collectively as 'treaty-limited equipment' (TLE), were designated under the Treaty: combat aircraft, tanks, armoured combat vehicles (ACVs), artillery pieces, and attack helicopters. It was

---

5 For a detailed chronology of the CFE Treaty and its origins, see the Federation of American Scientists web site at: http://www.fas.org/nuke/control/cfe/chron.htm

6 The sixteen NATO members at the time were Belgium, Canada, Denmark, France, the Federal Republic of Germany (West Germany), Greece, Iceland, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Turkey, United Kingdom and United States.

7 Following the withdrawal of the German Democratic Republic (East Germany) from the Warsaw Pact and the unification of Germany in October 1990, the six remaining Warsaw Pact members were the Soviet Union, Bulgaria, Czechoslovakia, Hungary, Poland and Romania.

8 The full text of the Treaty on Conventional Armed Forces in Europe and related Protocols is available on the OSCE web site at: http://www.osce.org/docs/english/1990-1999/cfe/cfetreate.htm

9 Joseph Harahan and John Kuhn, *On-site Inspections under the CFE Treaty*, 24 July 1996, Chapter I, from the Federation of American Scientists web site at: http://www.fas.org/nuke/control/cfe/cfebook/ch1.html

agreed that neither NATO nor the Warsaw Pact would exceed the following ceilings on equipment:

- 20,000 tanks, of which 16,500 could be assigned to active units;
- 20,000 artillery pieces, of which 17,000 could be assigned to active units;
- 30,000 armoured combat vehicles, of which 27,500 could be assigned to active units;
- 6,800 combat aircraft;[10] and
- 2,000 attack helicopters.

The Treaty's area of applicability (known as the ATTU area) stretches from the Atlantic Ocean to the Ural Mountains in Russia. A map of the area covered by the Treaty is included as Appendix 1. The area is divided in turn into four broadly concentric zones, radiating out from the central zone covering the states of Central Europe.[11] Group limits are imposed on equipment in each zone. In addition, separate sub-limits are designated under the Treaty covering the two so-called Flank Zones in the outer northern and southern zones. These Flank Zones originally comprised Bulgaria, Greece, Iceland, Norway, Romania, Turkey, and the northern and southern military districts of the Soviet Union, although their area has been reduced since 1990.[12]

Four core components can be identified in the CFE Treaty:

- A phased reduction in equipment by States Parties, which was to occur during the period 1992-95;
- The imposition of limits on equipment within the Atlantic to the Urals area and in the four geographic zones, to be in place by November 1995;
- Exchanges of data and notifications on force structure and equipment holdings between parties, as specified in a Protocol on Notification and Exchange of Information; and
- A process of on-site inspections to verify compliance, following procedures laid out in a Protocol on Inspection.

A multilateral forum, the Joint Consultative Group (JCG), was established in Vienna to address issues relating to implementation and seek ways of resolving disputes.

---

[10] For more detail on the disputes over ceilings for, and definitions of, combat aircraft, see Joseph Harahan and John Kuhn, *On-site Inspections under the CFE Treaty*, 24 July 1996, Chapter I, from the Federation of American Scientists web site at: http://www.fas.org/nuke/control/cfe/cfebook/ch1.html

[11] The group of seven (now eight) countries in Central Europe included the recently united Germany, Luxembourg, Belgium, Netherlands, Poland, Hungary and Czechoslovakia (since 1993 the Czech Republic and Slovakia).

[12] See Section II C 2 below for more detail on the revised Flank Zones.

2. Inspection Procedures

Four different types of on-site inspection are provided for under the Treaty:

- Declared site inspections;
- Certification inspections;
- Reduction inspections; and
- Challenge inspections.

Each State Party has the right, regardless of whether it was originally a NATO or Warsaw Pact state, to inspect all other parties within the Treaty's area of application. However, no Party may conduct more than five inspections annually on the territory of a State that belonged to its own group.

3. Entry into Force

Entry into force was delayed by the dramatic political changes underway across Europe, which resulted in the formal disbanding of the Warsaw Pact in July 1991 and the emergence of several newly independent states with the dissolution of the Soviet Union in December 1991. The Tashkent Agreement of June 1992, involving all CFE signatories, resolved the division of Soviet military assets and established national ceilings for Russia and the other CFE-affected states of the former Soviet Union,[13] allowing the CFE Treaty to enter into force on 17 July 1992. Following the break-up of Czechoslovakia, the Czech Republic and Slovakia became separate States Parties to the CFE Treaty in January 1993.

4. Implementation

In order to meet the ceilings imposed under the Treaty, excess equipment was destroyed, or, in a few limited cases, converted to non-military purposes. By 1995, at the end of the reduction period, approximately 50,000 items of equipment had been destroyed by the States Parties, including:

- 18,000 tanks
- 8,900 artillery pieces
- 17,500 armoured combat vehicles
- 280 combat aircraft
- 2,100 attack helicopters[14]

Verification of these reductions involved around 2,300 intrusive on-site inspections by States Parties.

---

[13] The affected states of the former Soviet Union had agreed the division of assets and entitlements in a legally binding agreement at Budapest in 1991

[14] The CFE Treaty and CFE-1A Agreement, US State Department Factsheet, 7 November 1995, from http://www.state.gov/www/global/arms/factsheets/conwpn/cfe-1.html

In spite of considerable progress in many areas, some equipment reductions were not completed by the Treaty deadline, particular among the states of the former Soviet Union. A number of points of contention emerged following the Treaty's signature, including Russia's failure to fulfil its pledge to destroy 16,000 out of an estimated 50,000 items of military equipment that were redeployed east of the Urals prior to signature of the Treaty, and a lack of progress in addressing the re-subordination of Russian and Ukrainian motorised rifle divisions to the Navy, whose equipment is not covered under the Treaty.[15] In addition, Moscow sought changes to the Flank Zones to allow it to address security concerns in the North Caucasus and the conflict in the secessionist republic of Chechnya.[16]

The first CFE Review Conference took place in May 1996. Significant progress was reported on several of the points of contention. A politically binding Flank Agreement was reached, under which certain regions (oblasts) in both the Leningrad and North Caucasus Military Districts were removed from the Flank Zones. Russia agreed to limit equipment levels within the areas that had been removed from the Flank Zones and to reduce the amount of equipment in the revised zones to meet new limits which took effect on 31 May 1999.[17]

B. CFE-1A Agreement

The CFE Treaty also required States Parties to pursue a further agreement that would establish national ceilings on military personnel numbers. The resulting *Concluding Act of the Negotiation on Personnel Strength of Conventional Armed Forces in Europe* (known as the CFE-1A agreement) of July 1992 constitutes a political commitment by the signatories to limit the size of their conventional forces, rather a legally binding instrument like the CFE Treaty itself.[18] Each participating state has determined its own ceilings, taking into account its own defence requirements, and the levels were not subject to negotiation among the participants.

The CFE-1A agreement also provides for additional exchanges of information on military manpower levels and requires notification of any significant increases in unit strength, call-up of reserves or re-subordination of units.[19]

---

15 Chronology of the CFE Treaty from the Federation of American Scientists web site at: http://www.fas.org/nuke/control/cfe/chron.htm

16 For more detail on both the first Chechen conflict of 1994-1996 and the ongoing second conflict that broke out in 1999, see Library Research Paper 00/14, *The Conflict in Chechnya*, 7 February 2000.

17 For more detail on the precise breakdown of equipment levels, see *The Treaty on Conventional Armed Forces in Europe (CFE) adapts to a new era*, FCO Focus International paper, July 2000, p.6, from http://files.fco.gov.uk/info/briefs/armedforces.pdf

18 The full text of the CFE-1A agreement is available on the OSCE web site at: http://www.osce.org/docs/english/1990-1999/cfe/cfe-1ae.htm

19 The CFE Treaty and CFE-1A Agreement, US State Department Factsheet, 7 November 1995, from http://www.state.gov/www/global/arms/factsheets/conwpn/cfe-1.html

C. Agreement on Adaptation

In spite of the dramatically changed situation in Europe by the time of the CFE Treaty's entry into force, the States Parties agreed to abide by the original provisions until the end of the 40-month reduction period in 1995. It was then agreed at the 1996 Review Conference to start negotiations on adapting the treaty to enable it to "sustain its key role in the European security architecture."[20]

Negotiations began in January 1997 and it was decided at the Ministerial Council meeting of the Organisation for Security and Cooperation in Europe (OSCE) in December 1998 to set the Istanbul OSCE summit in November 1999 as the deadline for finalising the Agreement on Adaptation.

1. Core Provisions

The Agreement on Adaptation was signed at Istanbul on 19 November 1999.[21] Once it enters into force, it will result in an Adapted CFE Treaty.

Central to the Agreement is a move away from the original CFE approach of viewing European security as a balance between two military blocs. Instead, greater emphasis is placed on National Ceilings, which are set at or below the existing treaty levels. According to the Foreign and Commonwealth Office, the equipment limits for NATO States will fall on average by 14 per cent under the revised treaty.[22] In addition, Territorial Ceilings place a cap on the total of national and foreign tanks, armoured combat vehicles and artillery on any State Party's territory.[23] This will impose greater constraints on deployments abroad and reduce the potential for destabilising concentrations of forces.

The Defence Committee outlined three main changes under the Agreement:

- Individual countries (rather than the two Cold War blocs) were given equipment ceilings for the five types of conventional equipment—'national' ceilings (for a country's equipment irrespective of where in Europe it is held) and 'territorial' ceilings (equipment held within a country, of whatever

---

20 'Final Document of the First Conference to Review the Operation of the Treaty on Conventional Armed Forces in Europe and the Concluding Act of the Negotiation on Personnel Strength', 15-31 May 1996, http://www.osce.org/docs/english/1990-1999/cfe/cfe1reve.htm

21 The full text of the Agreement on Adaptation is available on the OSCE web site at: http://www.osce.org/docs/english/1990-1999/cfe/cfeagree.htm

22 *The Treaty on Conventional Armed Forces in Europe (CFE) adapts to a new era*, FCO Focus International paper, July 2000, p.2, from http://files.fco.gov.uk/info/briefs/armedforces.pdf

23 Combat aircraft and attack helicopters are not covered under the Territorial Ceilings because their mobility and long range would make effective verification extremely difficult.

nationality, to accommodate the stationing or deployment of one country's forces on another's territory).

- Russia was given a more generous (territorial) sub-ceiling for armoured vehicles in the Flank Zone (whose southern element includes Chechnya), where it had consistently held equipment at levels in excess of those permitted by the existing Treaty.
- The verification regime, within which the parties could inspect one another's equipment to check their declarations of equipment holdings, was extended and adjusted to reflect the new types of equipment ceilings.[24]

In the case of most States Parties the Territorial Ceilings are the same as the National Ceilings. However, some countries' ceilings, notably Germany, are significantly higher because of the forces they host. The Agreement does give some flexibility to allow for crisis management operations, military exercises and the transit of equipment through the territory of States Parties.[25] These are covered under what the Agreement terms "Exercises" and "Temporary Deployments".

Details of the national ceilings set under the Agreement on Adaptation are laid out in the following table:

Figure 3: 'National Ceilings' under the Adaptation Agreement

Equipment held by:	Battle tanks	Armoured combat vehicles	Pieces of artillery	Combat aircraft	Attack Helicopters
Armenia	220	220	285	100	50
Azerbaijan	220	220	285	100	50
Belarus	1800	2600	1615	294	80
Belgium	300	989	288	209	46
Bulgaria	1475	2000	1750	235	67
Canada	77	263	32	90	13
Czech Republic	957	1367	767	230	50
Denmark	335	336	446	82	18
France	1226	3700	1192	800	374
Georgia	220	220	285	100	50
Germany	3444	3281	2255	765	280
Greece	1735	2498	1920	650	65
Hungary	835	1700	840	180	108

[24] *Arms Control and Disarmament (Inspections) Bill*, Defence Committee Third Report of Session 2002-03, HC 321, 14 April 2003, Para 6

[25] More detail on the issues relating to ceilings can be found in *The Adaptation of the Treaty on Conventional Forces in Europe*, Defence Committee Twelfth Report of Session 1999-2000, 2 August 2000, HC 295, Paras 29-31

Equipment held by:	Battle tanks	Armoured combat vehicles	Pieces of artillery	Combat aircraft	Attack Helicopters
Iceland	0	0	0	0	0
Italy	1267	3172	1818	618	142
Kazakhstan	50	200	100	15	20
Luxembourg	0	0	0	0	0
Moldova	210	210	250	50	50
Netherlands	520	864	485	230	50
Norway	170	275	491	100	24
Poland	1730	2150	1610	460	130
Portugal	300	430	450	160	26
Romania	1375	2100	1475	430	120
Russia	6350	11280	6315	3416	855
Slovakia	478	683	383	100	40
Spain	750	1588	1276	310	80
Turkey	2795	3120	3523	750	130
Ukraine	4080	5050	4040	1090	330
UK	843	3017	583	855	350
US	1812	3037	1553	784	396
TOTAL	35574	56570	36312	13203	3994

Source: Defence Committee Twelfth Report of Session 1999-2000, *The Adaptation of the Treaty on Conventional Forces in Europe*, HC295, Para 28.

The changes introduced to the inspections process are covered in detail in Section III E 1 on the Bill below.

2. Changes to the Flank Zones

The Flank Zones set up under the 1990 Treaty and revised at the 1996 Review Conference no longer exist for the purposes of the Agreement on Adaptation, although territorial sub-ceilings have been introduced for territory covering the revised Flank territory.

Russia agreed at Istanbul that the politically binding 1996 Review Conference limits would become legally binding. In return, the other States Parties agreed to permit an increase in the number of armoured combat vehicles that Russia could station within the reduced Flank Zones from 1,380 to 2,140, in recognition of Russia's security concerns in the North Caucasus. However, this limit may not be increased by Extraordinary Temporary Deployments within the flank territory.

Following disputes over the scale of the Russian military presence in Georgia and Moldova, bilateral agreements were concluded at the Istanbul summit between Moscow and the two former Soviet states. With regard to Georgia, Russia undertook to reduce its equipment levels to the level of a basic temporary deployment[26] by 31 December 2000 and to close two of its four bases there by 1 July 2001. In the case of Moldova, Russia pledged to remove all its treaty-limited equipment by the end of 2001 and all its remaining forces by the end of 2002.

The agreement with Georgia and various other statements by States Parties were attached to the *Final Act of the Conference of the States Parties* (the 'Final Act') which was concluded at the Istanbul summit.[27] More detail on the state of play regarding implementation of these issues can be found in Section II E below.

3. Accession of non-CFE Treaty States

Unlike the original CFE Treaty, the Adapted Treaty makes provision for accession by non-CFE States Parties with territory within the Atlantic to the Urals area. Negotiations would be required between States Parties and the accession states to establish both National Ceilings and Territorial Ceilings, and may result in an increase in the total amount of equipment permitted under the Treaty due to the growth in the area of territory and the number of States Parties.[28]

Several states have indicated their intention to join to the CFE Treaty when possible. Slovenia and the Baltic states of Estonia, Latvia and Lithuania, among others would consider signing the Adapted Treaty as part of their planned accession to NATO. Russia believes the absence of the Baltic states from the Treaty constitutes a loophole that could allow NATO to deploy large numbers of forces and equipment to a potentially threatening position, without reference to CFE limits.

D. 2001 CFE Review Conference

The second CFE Review Conference was held in Vienna in May-June 2001. In the Conference's formal conclusions the States Parties made the following observations on implementation:

> The implementation of the Treaty since its entry into force in 1992 has brought positive results including significantly reduced holdings of Treaty-limited

---

[26] i.e. 153 tanks, 241 armoured combat vehicles and 140 artillery systems. Source: *The Treaty on Conventional Armed Forces in Europe (CFE) adapts to a new era*, FCO Focus International paper, July 2000, p.8, from http://files.fco.gov.uk/info/briefs/armedforces.pdf

[27] The full text of the Final Act of the Conference of States Parties to the Treaty on Conventional Armed Forces in Europe and the various annexed statements is online at: http://www.osce.org/docs/english/1990-1999/cfe/cfefinact99e.htm

[28] *The Treaty on Conventional Armed Forces in Europe (CFE) adapts to a new era*, FCO Focus International paper, July 2000, p.8, from http://files.fco.gov.uk/info/briefs/armedforces.pdf

> equipment and increased confidence through transparency and predictability involving conventional armed forces. The States Parties welcomed the impressive progress that had been made in implementing the Treaty, including the reduction of more than 59,000 pieces of conventional armaments and equipment, the exchange of about 6,000 notifications per year in addition to annual exchanges of information and the conduct of more than 3,300 on-site inspections and observation visits to verify compliance with the provisions of the Treaty and its associated documents. With regard to the Concluding Act on Personnel Strength, the States Parties noted with satisfaction that the personnel strength of conventional armed forces in the area of application had been reduced significantly.[29]

Furthermore:

> The States Parties reviewed the operation and implementation of the CFE Treaty and its associated documents. They concluded that in general the CFE Treaty was operating and being implemented in a satisfactory manner. However, there were a number of implementation issues requiring further consideration and resolution in the Joint Consultative Group.
>
> The States Parties noted that certain numerical limitations established by the Treaty were being exceeded. The States Parties were informed that the excess, which had been declared to be of a temporary nature, had been decreased. They expect that the remaining excess will be eliminated as soon as it is possible. They reaffirmed the importance of transparency with regard to the elimination of any excesses over CFE Treaty limits. In this context, they reiterated their commitment to full and continued implementation of the Treaty and its associated documents and their adherence to its numerical limitations.[30]

E. Outstanding compliance issues

Three main issues have emerged in relation to Russia's compliance with the CFE Treaty, the Final Act and the Agreement on Adaptation. The first involves Russian deployments in the North Caucasus region in and around the secessionist republic of Chechnya. The other two relate to the disputed Russian military presence in the independent former Soviet states of Moldova and Georgia. Under the CFE Treaty such deployments in other countries require the assent of the host states.

---

[29] Formal Conclusions of the Second Conference to Review the Operation of the Treaty on Conventional Armed Forces in Europe and the Concluding Act of the Negotiation on Personnel Strength, 1 June 2003, from http://www.osce.org/docs/english/1990-1999/cfe/cfetr_2revconfe.htm

[30] Formal Conclusions of the Second Conference to Review the Operation of the Treaty on Conventional Armed Forces in Europe and the Concluding Act of the Negotiation on Personnel Strength, 1 June 2003, from http://www.osce.org/docs/english/1990-1999/cfe/cfetr_2revconfe.htm

1. North Caucasus

In spite of earlier concerns over the size of Russian deployments in the North Caucasus, British Government officials indicated to the Defence Committee in early 2003 that Russia could "be said to be in compliance with its commitments" on equipment levels in the Flank Zones.[31]

The Defence Committee welcomed that "improved position", adding that:

> **On this particular test, UK ratification need not be delayed.** In reaching such a conclusion, we make no observation on the wider conflict in Chechnya, or the prospect of its settlement after the recent referendum there on a new constitution. The conflict should not in itself prevent the implementation of the Adaptation Agreement, whose provisions may in fact act to reduce instability by constraining the deployment of forces in the region.[32]

2. Russia and Georgia

Moscow's relations with Tbilisi remain tense. One area of dispute relates to the secessionist northern region of Abkhazia, which seeks separation from Georgia. Russian peacekeeping forces operate along the boundary between Abkhaz and Georgian controlled territory, alongside a UN observer force (UNOMIG).[33]

In addition, Russian allegations that Georgia has harboured Chechen rebel forces on its territory during the current conflict have resulted in frequent diplomatic disputes between the two countries and occasional Russian air strikes on Georgian territory near the joint border.

Further points of contention include Georgia's developing relationship with NATO[34] and Russia's maintenance of four bases on Georgian territory. Progress on the latter issue was reported at the Istanbul summit in November 1999 when the two countries agreed a Joint Statement, attached to the CFE Final Act, outlining steps to be taken in resolving their outstanding issues:

> 1. The Russian Side undertakes to reduce, by no later than 31 December 2000, the levels of its TLE [treaty-limited equipment] located within the territory of

---

31 *Arms Control and Disarmament (Inspections) Bill*, Defence Committee Third Report of Session 2002-03, HC 321, 14 April 2003, Ev 2, Para 13

32 *Arms Control and Disarmament (Inspections) Bill*, Defence Committee Third Report of Session 2002-03, HC 321, 14 April 2003, Para 26

33 For more detail on the Abkhaz dispute and the mandate of UNOMIG, see the UN Department of Peacekeeping Operations website at http://www.un.org/Depts/dpko/missions/unomig/background.html

34 For more detail on NATO and its relations with the former Soviet states and former member states of the Warsaw Pact, see Library Research Paper 03/05, *NATO: The Prague Summit and Beyond*, 16 January 2003.

> Georgia in such a way that they will not exceed 153 tanks, 241 ACVs and 140 artillery systems.
> 2. No later than 31 December 2000, the Russian Side will withdraw (dispose of) the TLE located at the Russian military bases at Vaziani and Gudauta and at the repair facilities in Tbilisi.
> The Russian military bases at Gudauta and Vaziani will be disbanded and withdrawn by 1 July 2001.
> The issue of the utilization, including the joint utilization, of the military facilities and infrastructure of the disbanded Russian military bases remaining at those locations will be resolved within the same time-frame.
> 3. The Georgian Side undertakes to grant to the Russian Side the right to basic temporary deployment of its TLE at facilities of the Russian military bases at Batumi and Akhalkalaki.
> 4. The Georgian Side will facilitate the creation of the conditions necessary for reducing and withdrawing the Russian forces. In this connection, the two Sides note the readiness of OSCE participating States to provide financial support for this process.
> 5. During the year 2000 the two Sides will complete negotiations regarding the duration and modalities of the functioning of the Russian military bases at Batumi and Akhalkalaki and the Russian military facilities within the territory of Georgia.[35]

The airbase at Vaziani was disbanded as planned, although, as of early 2003, the British Government indicated it had not been possible to verify the decommissioning and formal transfer of Gadauta in Abkhazia. The Defence Committee heard evidence from British Government officials that Russia had reduced its treaty-limited equipment in Georgia to the required level, but that further progress on the withdrawal of troops and the closure of the two remaining bases had been beset by disputes.[36]

Reports in early September 2003 suggested that bilateral talks on a Russian withdrawal from the remaining two bases had made little progress, but that a further round of talks would take place in October. Georgia is pressing for the return of the bases within three years, whereas Russia is insisting on a longer timescale of 11 years. Georgia has also indicated it is considering seeking financial compensation from Russia to cover the use of Georgian infrastructure, power and water.[37]

---

35 Joint Statement of the Russian Federation and Georgia, 17 November 2002, Annex 14 attached to the Final Act of the Conference of the States Parties to the Treaty on Conventional Armed Forces in Europe, available at http://www.osce.org/docs/english/1990-1999/cfe/cfefinact99e.htm#Anchor-FINA-7478

36 *Arms Control and Disarmament (Inspections) Bill*, Defence Committee Third Report of Session 2002-03, HC 321, 14 April 2003, Ev 3, paras 15-18

37 *BBC Monitoring*, 5 September 2003

3. Russia and Moldova

Like Georgia, Moldova's relations with Russia are complicated by an ongoing separatist dispute. Russian forces were deployed to the secessionist Transdneistr region of Moldova during the early 1990s, pending a resolution of the region's status. Negotiations under the auspices of the OSCE have made slow progress.

The Government indicated during consideration of the Bill in the Lords in early 2003 that Russia had completed the withdrawal of all its treaty-limited equipment from Moldova.[38] Troops remain deployed in the region, guarding an ammunition dump at Colbasna. Russia has said it will need until the end of 2003 to complete its full withdrawal from Moldova, a year later than the agreed deadline of the end of 2002. Progress was initially hampered by opposition to the withdrawal from the secessionist authorities in Transdneistr, but the process has since been eased by an agreement with Russia to address the region's outstanding gas supply debts.

F. Progress towards ratification

The legally binding Agreement on Adaptation was signed on 19 November 1999 by the 30 CFE States Parties. Once the depository (The Netherlands) has received all instruments of ratification, the Adapted Treaty will enter into force, succeeding the original CFE Treaty. Until that time, the original Treaty will remain in force as the only legally binding CFE document.

Given the outstanding concerns over Russian compliance, NATO states have agreed not to proceed with ratification until all States Parties verifiably return to the levels specified under the Adapted Treaty and comply with their commitments under the Final Act.

---

[38] HL Deb 7 January 2003, c896

III Arms Control and Disarmament (Inspections) Bill

A. Developments prior to the Bill's Publication

The *Agreement on Adaptation of the Treaty on Conventional Armed Forces in Europe* was laid before Parliament as a Command Paper (Cm 4630) on 25 February 2000. Bruce George, the Chairman of the Defence Select Committee, tabled an Early Day Motion on 28 February, declaring:

> That this House takes note of the Agreement on Adaptations of the Treaty on Conventional Armed Forces in Europe (Cm 4630), done at Istanbul on 19th November 1999 and presented to Parliament on 25th February, and requests Her Majesty's Government not to ratify the Agreement until the Defence committee has examined and reported on its implications.[39]

In a report of 2 August 2000 the Defence Committee reviewed the obligations of the original CFE Treaty and the extent to which they had been met by the Treaty's signatories. The Committee went on to examine the main features of the Adaptation Agreement and the implications of the changes introduced. It concluded that:

> The Adaptation Agreement, if honoured properly by all its signatories, offers real improvements on the existing Treaty. […]
>
> The Adaptation Agreement should be ratified by the UK, but its timing is all-important. There will be no gain for ratifying early if Russia then treats the new limits with a cavalier disregard. The UK, along with its Allies, should use the months ahead to press the new Russian administration to ratify the Agreement on the basis of full compliance with its terms.[40]

B. Summary of the Bill

The *Arms Control and Disarmament (Inspections) Bill* [HL], Bill 50 2002-03, would amend the original *Arms Control and Disarmament (Inspections) Act 1991* (chapter 41) relating to the CFE Treaty.[41] The Act allows access to private land and property for inspection purposes. The Ministry of Defence, as part of the Government, is bound directly by the Treaty.

---

39 EDM 433 1999/2000

40 *The Adaptation of the Treaty on Conventional Forces in Europe*, Defence Committee Twelfth Report of Session 1999-2000, 2 August 2000, HC 295, Paras 51 & 57

41 The full text of the 1991 Act is available online at: http://www.legislation.hmso.gov.uk/acts/acts1991/Ukpga_19910041_en_1.htm

The main provisions of the Bill were summarised by the Defence Committee in its report of 14 April 2003:

> *Clause 1 and Schedule 1*; providing additional rights of entry to private land and property for inspection purposes, reflecting changes in the inspection regime introduced by the 1999 Adaptation Agreement:
>
> - adding new rights of entry for inspections of 'declared sites' under Section VII of the Treaty's *Protocol on Inspections*, and under Section IX (inspections of 'designated areas' holding equipment in excess of ceilings introduced by the Adaptation Agreement).
> - replacing specific references to Section VIII inspections ('challenge inspections') in the 1991 Act with more general references to all types of inspections.
> - amending the 1991 Act to reflect amendments to the Protocol on Inspections that are introduced by the Adaptation Agreement.
>
> *Clause 2*; allowing for any further future amendments concerning inspections under the CFE Treaty to be made, by Order in Council. This would avoid the need for further primary legislation for that purpose.
>
> *Clause 3*; permitting the Foreign Secretary to determine a date at which the new Act would come into force, and the Adaptation Agreement to be ratified.[42]

Members are also referred to the Explanatory Notes published with the Bill.[43]

C. Progress of the Bill

The *Arms Control and Disarmament (Inspections) Bill* [HL] was introduced in the House of Lords on 14 November 2002 as HL Bill 2 2002-03. Second Reading took place on 25 November.[44] The Bill was considered by a Committee of the Whole House on 7 January 2003[45] and the formal Report Stage took place on 23 January.[46] After receiving its formal Third Reading in the Lords on 30 January,[47] the Bill (in the Commons, designated Bill 50 2002-03) passed without amendment to the House of Commons where it received its First Reading on the same day. The Second Reading in the Commons is scheduled for 18 September 2003.

---

42 *Arms Control and Disarmament (Inspections) Bill*, Defence Committee Third Report of Session 2002-03, HC 321, 14 April 2003, Para 2

43 *Arms Control and Disarmament (Inspections) Bill* [HL] Explanatory Notes (Bill 50-EN)

44 HL Deb 25 November 2002, cc606-13

45 HL Deb 7 January 2003, cc893-7

46 HL Deb 23 January 2003, c908

47 HL Deb 30 January 2003, c1247

The Commons Defence Committee considered the Bill and the various issues related to ratification of the Agreement on Adaptation in a report of 14 April 2003.[48] Information on the Committee's recommendations can be found in Section III E below.

D. Debate in the Lords

The debate in the Lords on the Bill was brief. At Second Reading Baroness Symons of Vernham Dean, the Government Spokesperson for the Foreign and Commonwealth Office, described it as a "short technical Bill" which would provide the legislation necessary for the UK to ratify the Agreement on Adaptation when the time is right.[49]

Baroness Rawlings, the Conservative Opposition Spokesperson for Foreign and Commonwealth Affairs, welcomed the Bill and its provisions relating to amending the CFE Treaty and enhancing transparency.[50] However, she registered concerns about the use of secondary legislation to enact measures and sought assurances that all parties likely to be affected by the amended treaty, such as private companies, would be made aware of the implications of the revised inspection regime.

Lord Wallace of Saltaire, the Liberal Democrat Spokesperson for Foreign and Commonwealth Affairs, said his party welcomed what he called a "modest but useful extension of the CFE Treaty",[51] adding that the principle of mutual inspection was "extremely important".[52] He sought and received clarification that US bases in the UK and elsewhere in Europe were subject to inspection.[53] In addition, he expressed disappointment about "how inactive European governments and forces" had been in the Caucasus area in assisting with peacekeeping duties and in training regional armed forces, particularly in the disputed Georgian region of Abkhazia.[54]

Lord Blaker suggested a need for more accessible Explanatory Notes to accompany the Bill, declaring that:

> I found it a painful exercise trying to sort out exactly what the Bill does. […] I might make a humble suggestion that with a Bill of this complexity, it would be useful if the Explanatory Notes were intelligible to and helpful to Members of this House who are perhaps not so well informed as some other people.[55]

---

48 *Arms Control and Disarmament (Inspections) Bill*, Defence Committee Third Report of Session 2002-03, HC 321, 14 April 2003
49 HL Deb 25 November 2002, c607
50 HL Deb 25 November 2002, c607
51 HL Deb 25 November 2002, c608
52 HL Deb 25 November 2002, c609
53 HL Deb 25 November 2002, c609 and 613
54 HL Deb 25 November 2002, c609
55 HL Deb 25 November 2002, c610

He was supported in this by Lord Skelmersdale, who requested that the various amendments made by the Bill be drawn together "to achieve a composite whole".[56] Appendix 2 to this paper provides the proposed revised 1991 Act with the text of the amendments and repeals set out under the Bill.

In response, Baroness Symons offered a meeting with officials to examine some of the technical aspects of the Bill and to offer some explanations.[57] The Government also provided additional Explanatory Notes for the Committee Stage, a move that was welcomed by Lord Blaker:

> I want to thank the noble Baroness for providing additional Explanatory Notes. They were extremely helpful and entirely met our needs, which is why I did not take up her further offer of a meeting.[58]

Lord Blaker also sought clarification at Second Reading on the issue of UK defence installations in Gibraltar and asked if Spanish representatives could potentially participate in an inspection of these facilities. Baroness Symons declared that:

> Gibraltar would be subject to inspections generally, but NATO allies do not inspect each other's territories, so the fears expressed by the noble Lord in respect of Spain can be safely allayed.[59]

Further detail on the other issues raised during the Lords' consideration of the Bill is contained in the following discussion of the main provisions.

E. Main provisions of the Bill

1. Clause 1 and Schedule 1 – Amendments to Rights of Access

Clause 1 (1) introduces Schedule 1, which makes a number of amendments to the 1991 Act to provide for additional rights of entry to implement inspections.

The Protocol on Inspection to the 1990 CFE Treaty makes provision for four different types of on-site inspection:

- **Inspections of 'declared sites'**, such as training areas, ranges, maintenance and storage areas, and airfields etc, where treaty-limited equipment is held (Section VII of the Protocol);
- **Challenge inspections** allowing States Parties to conduct inspections at short notice of a specified area covering up to 65 square kilometres (Section VIII);

---

56 HL Deb 25 November 2002, 611
57 HL Deb 25 November 2002, c611
58 HL Deb 7 January 2003, c894
59 HL Deb 25 November 613

- **Certification inspections** to certify that multi-purpose attack helicopters and combat-capable aircraft are not reconfigured as support helicopters or trainer aircraft (Section IX); and
- **Reduction inspections** to verify that any reductions carried out under the Treaty are conducted in accordance with its terms (Section X).

Under the revised Protocol on Inspection introduced under the Agreement on Adaptation, Section IX inspections may also be conducted at a designated site when a State Party has given notification that a territorial ceiling has been exceeded as a result of a military exercise or a temporary deployment.

The 1991 Act makes provision for only Section VIII challenge inspections, as only these types of inspection were deemed likely to require rights of access to privately owned or operated sites, rather than sites owned or operated by the Ministry of Defence. Rights of access for Section VIII inspections are not affected by the Bill, as outlined in the Explanatory Notes:

> Section VIII inspections remain in the Protocol on Inspection as amended by the Agreement on Adaptation […]. Consequently, the Bill does not affect the substance of the powers of entry for Section VIII inspections provided for in the 1991 Act.

However, three categories of changes are required to the 1991 Act and are detailed in Schedule 1 to the Bill. The Explanatory Notes summarise the categories as follows:

> (i) adding the new rights of entry for Section VII and Section IX inspections;
> (ii) amending those provisions of the Act which refer specifically to "challenge" inspections under Section VIII so that they refer to all three types of inspection; and
> (iii) other consequential amendments to reflect amendments made to the Protocol on Inspections by the Agreement on Adaptation.

a. New Rights of Entry

Schedule 1 seeks amendments that would extend the Act's provisions to cover Section VII (declared site) inspections. The Explanatory Notes declare that:

> Section VII inspections are not new to the Agreement on Adaptation. They were already provided for in the Protocol on Inspection to the CFE Treaty. But increased private ownership and operation of military sites in the United Kingdom since the 1991 Act now mean that new rights of entry to private land

> are required to enable the United Kingdom effectively to implement its Section VII obligations.[60]

The Defence Committee commented in its report of April 2003 that the 1991 Act

> already gives such access powers for Section VIII challenge inspections, but further legislation is now needed because foreign inspection teams might also wish to visit 'declared' (Section VII) or 'designated' (Section IX) sites in the UK which include properties or land owned or operated by third parties. **The 1990 Treaty, however, already provides for Section VII inspections, and so for these particular inspections the current Bill appears to remedy an omission (or at least a lack of far sightedness) in the 1991 Act.**[61]

Schedule 1 also provides for a new category of Section IX inspections, which concern

> inspections of "designated areas" in the territory of a State Party. These inspections may take place if a State Party gives notification that its territorial ceilings for equipment limited by the Treaty are temporarily exceeded (e.g. due to military exercises). Rights of entry to private land are required for this new type of inspection.[62]

b. Amendments to Make the Provisions of the 1991 Act Refer to all Three Types of Inspection

The Explanatory Notes provide a summary of the amendments proposed under the Bill. These are intended to broaden the scope of the Act to cover all three types of inspection, rather than just the Section VIII challenge inspections covered under the 1991 Act. According to the Explanatory Notes, the Bill would achieve this by means of the following amendments:

> 16. Sections 1, 2 and 3 of the 1991 Act contains various references to "challenge" inspections and "specified area" which are terms specific to Section VIII inspections. The Bill will confer rights of entry in relation to two additional types of inspection as set out at paragraphs 5-7 above. The various references in Section 1, 2 and 3 of the 1991 Act which were specific to Section VIII inspections therefore need to be removed and, where appropriate, replaced with more general references that cover all three types of inspection.

---

60 *Arms Control and Disarmament (Inspections) Bill* [HL] Explanatory Notes (Bill 50-EN), Para 10

61 *Arms Control and Disarmament (Inspections) Bill*, Defence Committee Third Report of Session 2002-03, HC 321, 14 April 2003, Para 13

62 *Arms Control and Disarmament (Inspections) Bill* [HL] Explanatory Notes (Bill 50-EN), Para 11. For more detail on the two activities that might trigger a Section IX inspection, namely 'exercises' and 'temporary military deployments', see Para 12 of the Defence Committee Third Report, HC 321, 14 April 2003.

17. Schedule 1 to the Bill achieves this in the following way:

- Paragraph 2(3) omits section 1(2)(a) which set out the definition of "challenge inspections".
- Paragraph 2(3)(b) omits the references to "specified area" and "challenge" from section 1(2)(c) of the 1991 Act, which defines "escort team" and "inspection team".
- Paragraph 3 removes the reference to "challenge" from the cross-heading preceding section 2 of the 1991 Act.
- Paragraph 4(2) removes the reference to "challenge inspections" from the side-note to section 2 of the 1991 Act and replaces it with the more general reference to "inspections pursuant to Sections VII, VIII and IX".
- Paragraph 4(3) removes the reference to "a challenge inspection within any specified area" from section 2(1) of the 1991 Act and replaces it with terminology, which makes it clear that this subsection is referring to Section VIII inspections. This is achieved by replacing it with the words "an inspection pursuant to Section VIII of the Protocol (challenge inspections within a specified area)".
- Section 2(2) of the 1991 Act required that the Secretary of State's authorisation for rights of entry contain a description of the "specified area" concerned. Paragraph 4(5) of Schedule 1 to the Bill replaces that reference by the more general "area to be inspected pursuant to the relevant Section of the Protocol".
- Section 2(3) of the 1991 Act set out the powers which the inspection team were able to exercise within the "specified area" as a result of the Secretary of State's authorisation. Paragraph 4(6) of Schedule 1 to the Bill replaces the reference to "specified area" by the more general "area in respect of which the authorisation is issued".
- Section 2(8) and (9) concerning potential legal challenges to the Secretary of State's authorisation contain references to "challenge" inspection in three places. Paragraph 4(8) and (9) of Schedule 1 to the Bill omit those references to "challenge".
- Section 3(1) of the 1991 Act which sets out the criminal offences in relation to inspections refers to "challenge" inspections. Paragraph 5 of Schedule 1 to the Bill removes that reference.[63]

Appendix 2 reproduces the 1991 Act with the various amendments and repeals proposed under the Bill incorporated into the text. It should be noted that the Schedule accompanying the 1991 Act, containing excerpts from the Protocol on Inspection, has not been reproduced as the Bill proposes that it be omitted (see Schedule 2 of the Bill).

---

[63] *Arms Control and Disarmament (Inspections) Bill* [HL] Explanatory Notes (Bill 50-EN), Paras 16-17

c. Consequential amendments

Various consequential amendments arise as a result of the new Agreement on Adaptation and the amended Protocol on Inspection. These are summarised in the Explanatory notes as follows:

> 18. The amendment of the Protocol on Inspections to the CFE Treaty set out in the Agreement on Adaptation require various consequential amendments to the 1991 Act as follows:
>
> - Paragraph 2(2) of Schedule 1 provides new definitions of "the Treaty" and "the Protocol" so as to mean respectively the CFE Treaty as amended by the Agreement on Adaptation, and the Protocol on Inspection as so amended.
> - Section 1(3)(b) of the 1991 Act contained a cross-reference to paragraph 1 of Section VI of the Protocol which contained the general rules for conducting inspections. That cross-reference is no longer accurate. As Section VI as a whole contains the rules for the conduct of inspections, the paragraph reference has simply been omitted.
> - Section 1(4) of the 1991 Act introduced the Schedule to the Act which set out various extracts from the Protocol on Inspections for ease of reference. That extract is no longer accurate and needs to be omitted. Accordingly Paragraph 2(5) of Schedule 1 to the Bill omits subsection 4. For the same reason, Paragraph 6 of Schedule 1 to the Bill omits the Schedule.
> - Section 2(5) of the 1991 Act ensured that the rights of entry conferred on inspection teams also applied if those teams divided into sub-teams in accordance with Paragraph 2 of Section VI of the Protocol on Inspections. That paragraph reference is no longer accurate, and the relevant provisions are contained in paragraphs 4 and 5 of Section VI of the Protocol on Inspections as amended. Paragraph 4(7) of Schedule 1 to the Bill therefore omits the reference to "Paragraph 2" and replaces it with "Paragraph 4 or 5".

As noted above, the proposed Bill amendments and repeals are brought together with the text of the 1991 Act in Appendix 2.

2. Clause 2 – Implementation of future revisions to the CFE Treaty

Clause 2 proposes that any future revisions to the CFE Treaty should be given effect in the UK by means of Orders in Council, subject to approval by affirmative procedure in both Houses of Parliament. Consequently, further primary legislation would not be required.

An FCO Memorandum to the Select Committee on Delegated Powers and Regulatory Reform outlined the reasons for this approach:

> 10. In the future, it is possible that the States parties to the CFE Treaty might be able to make further progress on enhanced transparency, confidence-building and security measures. Such provisions could include further enhanced international inspections. To achieve this further progress, the States parties to the CFE Treaty would negotiate a further amending treaty setting out the enhanced provisions. Any further enhanced provisions on international inspection could well require further legislation to enable the UK to ratify. The Department considers that it would be sensible to provide now for such possible future developments by providing a power to amend the 1991 Act to reflect any further amendments to the CFE Treaty relating to inspections.
>
> 11. As the CFE Treaty concerns European security, the Department consider it important that there should be parliamentary oversight of any further amendments to the 1991 Act, and accordingly the Bill provides for an affirmative resolution.[64]

There was some debate on this issue in the Lords. During the Committee Stage, Conservative Spokesperson Baroness Rawlings expressed her concern that any such amendments would not be addressed in primary legislation, asking:

> Is this not yet another example of the Government removing business from the Floor of the House where, quite rightly, important matters can receive your Lordships' full attention and input?
>
> As the CFE Treaty deals with sensitive and important issues, I should be grateful if the noble Baroness, Lady Symons of Vernham Dean, would explain why the Government have taken the decision to implement any future changes by order.[65]

Baroness Symons responded by saying that the matter had been referred to the Select Committee on Delegated Powers and Regulatory Reform for its view.[66] The Committee's report of 27 November 2002 declared:

> 17. This Henry VIII power would allow an Order in Council to modify the 1991 Act so far as appears necessary for giving effect to further amendments relating to inspections, made to the CFE Treaty. Any Order under this section would be subject to affirmative procedure.

---

64 Memorandum by the Foreign and Commonwealth Office on the Arms Control and Disarmament (Inspections) Bill [HL], contained in the Select Committee on Delegated Powers and Regulatory Reform First Report of Session 2002-03, 27 November 2002, HL 9, Annex 2

65 HL Deb 7 January 2003, c894

66 Select Committee on Delegated Powers and Regulatory Reform First Report of Session 2002-03, 27 November 2002, HL 9

> 18. The question arises whether it is appropriate for modification of the 1991 Act to be delegated at all, given that the 1991 Act did not provide for it. There is in principle no reason why there should not be delegation of the function of implementing an international agreement, especially where the delegation (as here) would be limited to implementation of one aspect (inspection) of future amendments to a particular Agreement. However, we have considered whether anything in the subject matter of this bill makes such delegation unsuitable. We have also considered whether there should be a limit set on any penalty for criminal offences should the Order in Council modify section 3 of the 1991 Act.
>
> 19. In view of the limited nature of the power, and the fact that it will be subject to affirmative procedure, we consider that this level of delegation and control is appropriate.[67]

Baroness Symons quoted from the Committee's report during the Lords Committee Stage and concluded that:

> I cannot agree with the noble Baroness that this is an example of the Government removing business that should properly be dealt with on the Floor of the House. Perhaps I may point out to her that we have consulted, as we should have done, with the appropriate and expert committee on the matter and it believes that Her Majesty's Government are adopting the correct procedure.[68]

The Liberal Democrat Spokesperson, Lord Wallace, indicated that he was supportive of the Government's position, declaring that:

> Given that the provision is subject to an affirmative resolution, we on these Benches support the Government.[69]

However, Lord Blaker raised additional concerns about the Committee's view, commenting:

> I am not entirely happy with the views of the Select Committee. I would have preferred not to have the provision relating to delegated legislation in the Bill in its current form. However, as the Select Committee has taken that view, it is difficult to argue too much against it. If it were going to give an affirmative answer to this part of the Bill, I would have preferred it to have limited that more narrowly. I would have preferred it to keep the answer expressly to the point, rather than making the wider comment that:
>
> > "There is in principle no reason why there should not be delegation of the function of implementing an international agreement".

---

67 Select Committee on Delegated Powers and Regulatory Reform First Report of Session 2002-03, 27 November 2002, HL 9, Paras 17-19

68 HL Deb 7 January 2003, c894

69 HL Deb 7 January 2003, c894

> I believe that that comment is too wide, especially when we are talking about such an important, sensitive and dangerous subject as arms control. I hope that the committee does not pursue its practice of expressing its recommendations in a sense that is wider than what is necessary to meet the problems before it.
>
> Furthermore, I would also like to support the necessity to make affirmative resolutions, which the committee did not do in its report. That is something of an oversight.[70]

3. Clause 3 – Short title, commencement and extent

If the Bill is passed, the resulting Act may be cited as the *Arms Control and Disarmament (Inspections) Act 2003*.

With regard to entry into force, Clause 3, subsection 2 stipulates that

> the substantive provisions of the Act will come into force on such day as the Secretary of State appoints by Statutory Instrument. In practice, this will take place when the Government is ready to ratify the Agreement on Adaptation. On signature of the Agreement on Adaptation in Istanbul in 1999, Russia made commitments in the CFE Final Act and its Annexes to withdraw from Georgia and Moldova. The United Kingdom position on ratification is that this can only be envisaged in the context of compliance by States Parties with agreed Treaty limits and consistent with the commitments contained in the CFE Final Act.[71]

The UK position on ratification is shared with its NATO Allies, who declared in a final communiqué from the Reykjavik ministerial meeting of the North Atlantic Council in May 2002 that:

> we can envisage ratification of the adapted CFE Treaty only in the context of full compliance by all States Parties with agreed Treaty limits and consistent with the commitments contained in the CFE Final Act. We urge a swift resolution of outstanding issues relating to Istanbul commitments, including on Georgia and Moldova.[72]

An amendment to subsection 2 was moved in the Lords by Conservative Spokesperson Baroness Rawlings. The amendment would have introduced a specific requirement that the Secretary of State would not proceed with ratification unless all States Parties had complied fully with the provisions of the CFE Treaty and of the CFE Final Act.[73]

---

70 HL Deb 7 January 2003, c894

71 *Arms Control and Disarmament (Inspections) Bill* [HL] Explanatory Notes (Bill 50-EN), Para 20

72 Final Communiqué from the Ministerial Meeting of the North Atlantic Council in Reykjavik, 14 May 2002, from http://www.nato.int/docu/pr/2002/p02-059e.htm

73 HL Deb 7 January 2003, c895

Baroness Rawlings declared:

> The Minister has explained carefully that the Government will ratify the adapted CFE Treaty only "when the time is right", and I am grateful for that. It does seem, however, rather unusual to me that your Lordships' House should be considering legislation when there is no prospect of commencement until certain states parties have complied fully with the provisions of the treaty to which the Bill relates. I accept that the Government, along with the other NATO allies, are urging Russia to resolve its problems in Georgia and Moldova.
>
> I should be interested to know, however, why we are discussing this Bill now, before the Government are prepared to ratify the adapted treaty. Can the Minister explain to the Committee the current position in Russia with regard to these territories and whether there have been any developments since we discussed the subject last? The commitments contained in the CFE Final Act are of fundamental importance and I should be most grateful for clarification on this point.[74]

Baroness Symons indicated the Government's opposition to the amendment, declaring that:

> The amendment proposed by the noble Baroness would limit the Government's scope on when we should ratify the treaty by providing that it should not happen until such time as all states parties have complied fully with the provisions of the CFE Treaty and the CFE Final Act.
>
> The Government believe that the amendment takes a sledge hammer to crack a nut. Everyone in NATO agreed that swift fulfilment of the outstanding Istanbul commitments on Georgia and Moldova are necessary. The noble Baroness asked: why legislate now? It is because we want to be ready to ratify as soon as we are able. The fulfilment of those outstanding commitments will create the conditions for allies and other states parties to move forward on the ratification of the adapted treaty, which I believe is one that we in your Lordships' House all broadly support. […]
>
> Perhaps I may point out to her that the principle on which Her Majesty's Government are operating is one of host nation consent. The views of Georgia and Moldova will be of key importance in deciding whether the conditions for ratification are in place. […]
>
> It would be unreasonable to put my right honourable friend the Foreign Secretary into a straitjacket on this issue—a straitjacket in which I hope none of the other Foreign Secretaries with whom my right honourable friend is dealing would find themselves—and to try, in a sense, to second guess the carefully crafted and negotiated wording in the NATO statement.

---

[74] HL Deb 7 January 2003, c895

> Were the amendment to be passed, it could potentially put the UK in the position of preventing the entry into force of the adapted CFE Treaty if we were not able to ratify at a point where negotiations led us to believe that ratification was the right position to take.
>
> I understand the noble Baroness's misgivings. While the wording she has brought forward looks similar to the NATO wording it is not the same. The NATO wording stresses the importance of the context of the negotiations and we believe that it is enormously important that my right honourable friend has the ability to negotiate on these issues in the same way as his other colleagues.75

She also provided clarification on the state of compliance with regard to Russia:

> Russia has complied with its treaty limits on equipment in the flank; that is, in Chechnya. It has removed the treaty-limited equipment, which we discussed at Second Reading, from Moldova and Georgia. Furthermore, Russia has disbanded its base at Vaziani, Georgia.
>
> However, although Russia has removed its TLE from the base at Abkhazia, legal transfer of the base to Georgia remains to be done, as does verification of the closure. Russia and Georgia have yet to agree a time-scale for the withdrawal of Russian stationed forces at the bases at Batumi and Akhalkalaki. Russian forces also remain in Transdniestria, Moldova, guarding the ammunition dump at Colbasna.[76]

Baroness Rawlings responded by saying:

> We do not want to put the Foreign Secretary into a straitjacket or to delay ratification. However, we are still worried about the situation in Moldova and Georgia and will come back to this issue on Report. At this stage, I beg leave to withdraw the amendment.[77]

The Commons Defence Committee considered the Bill and the various issues related to ratification of the Agreement on Adaptation in its report of April 2003.[78] It commented:

> Because the Act would give the Government the ability to ratify the Agreement by Statutory Instrument, consideration of the Bill itself needs to be focused on the question of ratification.[79]

---

75 HL Deb 7 January 2003, c895-7
76 HL Deb 7 January 2003, c896
77 HL Deb 7 January 2003, c897
78 *Arms Control and Disarmament (Inspections) Bill*, Defence Committee Third Report of Session 2002-03, HC 321, 14 April 2003
79 *Arms Control and Disarmament (Inspections) Bill*, Defence Committee Third Report of Session 2002-03, HC 321, 14 April 2003, Para 37

It concluded on the timetable for ratification and the issue of Russian compliance that:

> The UK and its NATO partners need not be idle spectators in this. They have to consider whether they should proceed to ratification when they judge that the Istanbul commitments have been effectively met, not least in order to encourage Georgia and Moldova to take a constructive and flexible approach to their own ratification. Georgia and Moldova's responsibilities need to be made clear to them, not needlessly to hinder the adaptation of the CFE Treaty. It should be made clear that the benefits of the Adaptation Agreement will not be left on one side indefinitely; benefits which for most state parties outweigh those of settling Georgia's and Moldova's separatist disputes.
>
> 42. Russia has the pivotal role, however, in bringing about conditions that could encourage Georgia and Moldova to ratify the Agreement (or at least to signal their 'consent' for others doing so). The UK and the other state parties should encourage Russia to find the wherewithal to provide sufficient security to allow an inspection of its base at Gudauta in Georgia, for example, and should maintain pressure on Moldova and the Transdniestrian authorities to reach a settlement that would allow the train shipments needed to reduce Russia's presence at its base in Colbasna. At the same time, now that Russia's flank zone holdings appear to be at acceptable levels, care will be needed not to allow the differences between Russia and its two neighbours to hold the Adaptation Agreement hostage.

The Committee concluded:

> with the provisos on continued opportunities for Parliamentary scrutiny which we set out below, we recommend that the House should pass this Bill, not least to give a clear message that the UK sees the conditions for ratification now beginning to fall into place. It would allow timely UK ratification once that is appropriate.[80]

As noted, it added caveats relating to the need for further parliamentary scrutiny.

Under the ‘Ponsonby Rule’, an undertaking observed by governments since the 1920s, treaties that have been signed and are subject to ratification are laid before the House for 21 days before being ratified.

In this particular case, the Agreement on Adaptation was laid before the House in February 2000 as Cm 4630. It is possible that the Government may decide not to proceed with ratification for some time, if the full conditions for ratification are not yet present. Clause 3 of the Bill would give Ministers the ability to ratify the Agreement when the

---

[80] *Arms Control and Disarmament (Inspections) Bill*, Defence Committee Third Report of Session 2002-03, HC 321, 14 April 2003, Para 42

time is right, by means of a Statutory Instrument subject to no further parliamentary proceedings.

The Committee considered that Parliament might wish to consider whether compliance had been achieved at the time of ratification. It therefore sought a specific undertaking from the Government to provide such an opportunity:

> the Government should also give a specific undertaking in the Second Reading debate on the Bill to notify the House at least 21 days in advance of its intention to proceed to ratification, to allow a re-examination of the issues at the time that that decision is taken, in its contemporary context.[81]

In its response to the Committee's report, the Government indicated its acceptance of this proposal, declaring that:

> The Government welcomes the Committee's recommendation that the House should pass the Arms Control and Disarmament (Inspections) Bill. The Government is content to give a specific undertaking in the Second Reading debate on the Bill to notify the House at least 21 days in advance of its decision to proceed to ratification, to allow for additional discussion of the issues at that time.[82]

4. Financial effects and effects on Public Service manpower

The Explanatory Notes declare that the Bill will "entail no additional public expenditure or changes to public service manpower. There are no tax implications."[83]

5. Regulatory Impact Assessment

The Explanatory Notes declare that the Bill "will have no impact on business".[84]

The Defence Committee considered in its April report the question of whether the Agreement on Adaptation would lead to an increase in the inspection burden on the UK. The Agreement provides not only for an additional type of inspection, it also increases the number of existing types of inspections that each country is liable to host. The table below shows the difference in the UK's inspection liability between the 1990 Treaty and the Agreement on Adaptation:

---

81 *Arms Control and Disarmament (Inspections) Bill*, Defence Committee Third Report of Session 2002-03, HC 321, 14 April 2003, Para 44

82 *Government Response to the Committee's Third Report of Session 2002-03*, Defence Committee Second Special Report of Session 2002-03, HC 754, 12 June 2003, Para 6

83 *Arms Control and Disarmament (Inspections) Bill* [HL] Explanatory Notes (Bill 50-EN), Para 22

84 *Arms Control and Disarmament (Inspections) Bill* [HL] Explanatory Notes (Bill 50-EN), Para 23

Figure 1: UK liability to host inspections		
	Under existing 1990 CFE Treaty	**Under the 1999 Adapted Treaty**
In UK (incl. Northern Ireland, Cyprus and Gibraltar)	13 Section VII inspections (of which up to 3 may be replaced by Section VIII inspections)	18 Section VII inspections (of which up to 4 may be replaced by Section VIII inspections)
In Germany	5 Section VII inspections	6 Section VII inspections
TOTAL	18 Section VII inspections (of which up to 3 may be Section VIII inspections instead)	24 Section VII inspections (of which up to 4 may be Section VIII inspections instead)

Source: *Arms Control and Disarmament (Inspections) Bill*, Defence Committee Third Report of Session 2002-03, HC 321, 14 April 2003, Figure 1, p.10

The formula used to calculate the number of inspections for which each State Party is liable takes account of the size of its declared forces and the number of military units (or 'objects of verification') holding treaty-limited equipment. The Defence Committee reported in 2000 that UK could expect an increase of one third in its liability to host inspections.[85] Nonetheless, the Committee concluded in its April report that

> in practice it seems unlikely that the position for private owners and operators will be significantly different under the Adapted Treaty. This is for a number of reasons: in the past less than half of the existing liability has been taken up; inspecting states will bear the cost of conducting additional inspections, and as new members join NATO the pool of other states who might wish to inspect UK forces is likely to diminish.[86]

More detail on the Committee's examination of this issue can be found in paragraphs 14-21 of the April report.

---

[85] Defence Committee Twelfth Report of Session 1999-2000, *The Adaptation of the Treaty on Conventional Forces in Europe*, 2 August 2000, HC 295, Para 41

[86] *Arms Control and Disarmament (Inspections) Bill*, Defence Committee Third Report of Session 2002-03, HC 321, 14 April 2003, extract from the summary.

The Government declared in its response to the report that it shared the Committee's view,

> borne out by historical evidence of inspection activity under the original CFE Treaty, that if the number of Section VIII inspections remains low and Section IX inspections are not triggered, as we expect, the demands placed on individual private owners should not be significantly increased by the enhanced inspection regime and the enactment of the Bill.[87]

6. European Convention on Human Rights

Section 19 of the *Human Rights Act* 1998 requires the Minister in charge of the Bill to make a statement about the compatibility of the Bill's provisions with the Convention rights defined under section 1 of that Act. The Secretary of State for Foreign and Commonwealth Affairs, Jack Straw, has declared that:

> In my view the provisions of the Arms Control and Disarmament (Inspections) Bill are compatible with the Convention rights.[88]

---

87 *Arms Control and Disarmament (Inspections) Bill*: *Government Response to the Committee's Third Report of Session 2002-03*, Defence Committee Second Special Report of Session 2002-03, HC 754, 12 June 2003, Para 2

88 *Arms Control and Disarmament (Inspections) Bill* [HL] Explanatory Notes (Bill 50-EN), Para 24

IV Related Issues

The 1991 Act and the Bill make provision for rights of access to private land and property. Private ownership and operation of UK military facilities has increased in recent years.

1. Part-Privatisation of DERA

The intention to part-privatise the Defence Evaluation and Research Agency (DERA) was first outlined in the 1998 Strategic Defence Review (SDR). The SDR stated:

> [We] need to find new ways of exploiting defence technology and expertise in civilian markets…We will harness the opportunities offered by a Public Private Partnership to strengthen the Defence Evaluation and Research Agency's ability to continue to provide world class scientific research well into the next century.[89]

The MoD's overall aim was to create a corporate entity, incorporating a majority of DERA's existing staff and facilities, capable of operating in the private sector but with mechanisms to preserve the organisations' essential character and protect MoD interests. Specifically, in an environment of falling defence budgets and fast technological change, it was envisaged that "NewDERA" would have more freedom to retain and reward high quality staff, attract private finance, and exploit new business opportunities in the commercial sector, while remaining the MoD's independent provider of technical expertise and advice.[90]

On 5 May 1999 the MoD published its Consultation Paper on the Public-Private Partnership (PPP) proposal for DERA. The proposed option for part-privatisation was the "Reliance" model which, in summary, envisaged the following:

> As much of the existing DERA as possible should be kept together but given the opportunity to access private capital as a Public Private Partnership. To achieve this, a special corporate vehicle should be created, operating in the private sector but with constraints that preserve its essential character…
>
> Certain activities may need to be retained in the MoD, for example for operational reasons, but these should be kept to a minimum. These may include the Chemical and Biological Defence (CBD) sector, the front line activities of the Centre for Defence Analysis (CDA) and a number of other teams…
>
> The only other capability to be retained in the MOD should be that required to allow effective management of the defence research programme…and sufficient staff to operate the formal Government-to-Government agreements with other nations for international collaboration.

---

89 Ministry of Defence, *Strategic Defence Review*, Cm 3999, July 1998, p.43

90 In 1999 the Ministry of Defence was DERA's main customer, representing nearly 90% of its income.

> Most of MoD's technical capability…would therefore pass into an independent private sector company with sufficient MoD control to satisfy stringent requirements for impartiality and integrity. MoD would continue to regard DERA as its technical representative and rely on it to provide world class services and capabilities…
>
> The ownership and control regime would be such that MoD would continue to rely on DERA's independence, impartiality, integrity and its ability to protect security sensitive or commercially sensitive information…to underpin this level of trust, the company would be constrained, both by means of its legal constitution and through contract, to protect those values. MoD would be able to ensure that these controls could be adequately enforced.[91]
>
> Initially at least, DERA would be the only possible supplier of some MoD work, most notably that which involved unique capability, handling of extremely sensitive information, integration of the research programme or Government focused collaboration with key allies.[92]

However, reactions to the MoD's proposals were largely critical. An assessment of DERA's future by *The Financial Times* on 10 September 1999, suggested:

> Their solution, published as a consultation paper in May, has been roundly criticised by politicians of all parties, weapons manufacturers, trade unions representing DERA staff, competing research organisation, and US officials– in other words, just about everybody who would be affected…According to the Institution of Professionals, Managers and Specialists (IPMS), "selling DERA would deprive MoD of its expertise, damage collaboration with overseas governments and reduce its ability to respond to the needs of the armed forces".
>
> To industrial companies, privatisation under the terms proposed would establish a privileged competitor for investment and government business…Private research organisations fear the new competitor could drive them out of business. The Association of Independent Research and Technology Organisations says the proposal is unworkable, "ignores fair competition", and "will cause positive harm to existing UK research and technology infrastructure".[93]

---

91 Ownership controls included the retention of an indefinite golden shareholding by the MoD, controls over ownership to exclude defence companies and those with conflicts of interest and an MoD veto over work for third parties.

92 Ministry of Defence, *A Public Private Partnership for the Defence Evaluation and Research Agency,* May 1999, p.5-6

93 'The future of the Defence Evaluation and Research Agency poses problems for new ministers', *The Financial Times,* 10 September 1999, p.13

An earlier article in *The Financial Times*, on 6 May 1999, also commented:

> Collaboration with the US on highly sensitive research programmes could be jeopardised if the Pentagon no longer saw DERA as representing the British government. One official says: "If we cannot safeguard collaboration, we will have to re-think this project."[94]

In response to criticism of the Government's proposals, an extension to the consultation period and the intention to re-examine other PPP options, was announced in a Written Answer on 26 October 1999 by the Secretary of State for Defence, Geoff Hoon:

> Following the announcement on 6 July that further discussions with stakeholders were continuing, we have held consultations with interested parties, including UK industry, our international partners, DERA staff and trade unions. In response to the feedback we have received, and a number of views expressed, we have decided to widen the scope of these discussions to address the issues raised in the consultation process. We will now undertake further work on these issues. This process will continue into the New Year.[95]

In its report *Defence Research*, published in November 1999, the Defence Select Committee welcomed the decision to extend the consultation period, although it concluded:

> We find the current proposals for DERA's future structure incoherent and self-contradictory. They do not present a persuasive solution.
>
> The risks of failure associated with the current proposals for the future status and ownership of DERA far outweigh the value of capital receipts anticipated. We conclude that the proposals for the future structure of DERA contained in the consultation document are fatally flawed and should not proceed.[96]

An article in *The Financial Times* on 31 January 2000 also suggested:

> The Pentagon has blown a £250m hole in Britain's stretched defence budget by vetoing the government's plans to part-privatise its defence research laboratories.
>
> US military chiefs reacted with alarm to a proposal that could have involved British defence companies getting their hands on US secrets during collaborative projects. Geoff Hoon, defence secretary, now faces the sensitive task of pushing ahead with a sale that excites the private sector, while placating Washington.[97]

---

94 Defence agency boffins face their biggest challenge', *The Financial Times*, 6 May 1999, p.9
95 HC Deb 26 October 1999, c768W
96 Defence Select Committee, *Defence Research*, HC 616, 10 November 1999, Section 117-121
97 'Pentagon shoots at sale of arms research agency', *The Financial Times*, 31 January 2000

2. Revised PPP Proposal

On 17 April 2000 the MoD published a second Consultation Paper outlining its revised proposal for a DERA PPP, which introduced a "Core Competence" model. In response to the concerns of stakeholders that some elements of DERA's activities should be kept within the public sector, three quarters of DERA would be turned into a company, to be floated eventually on the stock market. For strategic reasons the MoD would retain a core group of activities providing knowledge integration, conducting research at the level of defence systems, providing an in-house source of impartial advice and having responsibility for the integration and management of the research programme and international collaboration. That core group would include the Chemical and Biological Defence Sector at Porton Down, the Centre for Defence Analysis (CDA), the Defence Research Information Centre and the Defence Radiological Protection Service. As with the "Reliance" model, under the "Core Competence" model NewDERA would have access to private sector capital and the ability to exploit opportunities in the commercial market. Ownership controls would also be put in place, including the retention of a "golden" share by the MoD, while NewDERA would continue to be a major supplier of advice and research to the MoD.

In a Written Answer on 17 April 2000 the Secretary of State for Defence, Geoff Hoon, stated:

> …Core Competence best meets the PPP objectives [for DERA] while also responding to the views of stakeholders…The essence of Core Competence is a clear separation of those functions which are best developed within a PPP, and those which are best performed wholly within Government. Around three quarters of DERA would be turned into a company, which we would hope to float on the stock market as soon as its potential is judged to be suitably developed. A core of staff would be retained wholly within the MoD to provide a high level overview of defence science and technology. This ensures that the MoD would retain access to in-house impartial advice and allows management of the defence research programme and international research collaboration. Specific sensitive areas and programmes would also be retained.
>
> I believe that this approach would create two vibrant sustainable organisations. The new company would have the freedom to flourish, to grow its business and to diversify the wealth of knowledge it has built up over the years to the benefit of the wider UK economy while still providing the MoD with the essential services we will continue to need long into the future. The retained organisation will be a small but also world-class organisation offering rewarding careers within MoD and the wider civil service. This approach is good for DERA, good for MoD and good for the wider UK economy. It will provide the UK technology sector with added impetus and ensure that we are well placed to take on the challenges and opportunities offered by the 21st century.[98]

---

[98] HC Deb 17 April 2000, c366-7W

Commenting on the revised proposal, the Defence Select Committee in its report *The Future of DERA*, stated:

> In retaining a greater part of DERA within the MoD, including additional sensitive areas such as the Radiological Protection Board, the new proposals for DERA's future ownership and structure are generally an improvement over the MoD's earlier plans which we dismissed as ill-conceived and unworkable… [however] the potential benefits of a partial privatisation remain to be convincingly demonstrated by the MoD. In our judgement the current risks of proceeding with the public-private partnership– even in its new and improved format– continue to outweigh the still hypothetical benefits.[99]

With regard to the previous concerns of US Pentagon officials, in an Oral Answer on 15 June 2000 the then Minister for Defence Procurement, Baroness Symons of Vernham Dean, commented:

> So far as concerns the USA, I am happy to say that it seems broadly content with what Her Majesty's Government are now proposing…when I discussed this with the former Deputy Defence Secretary, John Hamre, and when I discussed it with the current Deputy Defence Secretary, Mr Rudy de Leon[100], both expressed themselves to be happy with the proposals; indeed they were very positive. We have had an extremely helpful response from the United States at those official levels.[101]

On 24 July 2000 the Secretary of State for Defence, Geoff Hoon, announced to the House the decision to take forward the "Core Competence" model for a DERA PPP.

> On 17 April, I announced a period of consultation on a document describing our proposals. Stakeholders, including the Defence Committee, have acknowledged the improvements that we have made over earlier proposals. They have welcomed our willingness to listen to their views. The overall response has been positive, with the majority of stakeholders recognising the need for change and endorsing our proposals as a sensible way forward. The US administration has also welcomed our new approach.
>
> Consequently, we have concluded that we should proceed with the core competence model set out in the consultation document, separating those functions that are best performed within a private sector company and those that are best performed wholly within government…[102]

---

99 Defence Select Committee, *The Future of DERA*, HC 462, 20 June 2000, Section 60

100 John Hamre and Rudy de Leon were officials in the previous Democrat administration.

101 HL Deb 15 June 2000, c1752

102 HC Deb 24 July 2000, c778-9

Iain Duncan Smith, when Shadow Defence Secretary, commented:

> The Conservatives remain in favour of privatisation, provided that a case can be made, and the case of DERA is no different. The previous Government turned down the proposals on DERA because they did not believe that the case could be made.[103]

Liberal Democrat Spokesman Menzies Campbell also criticised the decision:

> Does the Secretary of State understand that in spite of his assurances, more than residual discomfort remains in the House about what appears to be a doctrinaire drive towards the privatisation of part of DERA?[104]

3. QinetiQ

On 1 July 2001 DERA was vested into QinetiQ plc[105], a wholly Government-owned company, and the Defence Science and Technology Laboratory, which would remain within the MoD. The intention was to float QinetiQ on the stock exchange when market conditions were favourable, with the possibility of involving a strategic partner prior to flotation. In previous evidence to the Defence Select Committee on 28 February 2001 the then Minister for Defence Procurement, Baroness Symons of Vernham Dean outlined the MoD's vision for NewDERA:

> Initially the plc will be wholly government-owned, but work will continue to prepare the company for a transaction. The precise nature and timing of the transaction is dependent on value-for-money considerations and, to a certain extent, upon the market prevailing at the time… We have said that we wanted to see broad share ownership. Obviously that depends on the route to market. You have mentioned strategic partners. We have been talking about the possibility of strategic partners. We have not taken a decision on how to progress that…The privatised organisation will reflect the marketplace, but the details have to be worked out.[106]

On 6 March 2002 the MoD announced its intention to sell a stake in QinetiQ to a strategic partner in order to boost its appeal to the stock market. In a Written Answer the Parliamentary Under-Secretary of State for Defence, Dr Lewis Moonie, stated:

> Since the vesting of QinetiQ as a company on 1 July 2001, work has concentrated on preparing the company for sale, options for which were through a flotation or strategic partnership. We have now completed a comprehensive review of the

---

[103] HC Deb 24 July 2000, c780
[104] HC Deb 24 July 2000, c783
[105] Formerly referred to as NewDERA and pronounced 'kinetic'.
[106] Defence Select Committee, *The Draft Defence Science and Technology Laboratory Trading Fund Order 2001*, HC 289, 13 March 2001, Minutes of Evidence

> available options for the transaction route and timing in conjunction with specialist advisers and QinetiQ's senior management. Although flotation has always been our preferred route, as we have consistently stated, the priority is to achieve a successful move into the private sector with a transaction that clearly achieves best value for the taxpayer. We believe that a flotation under current market conditions would not realise this, yet delay could lead to a damaging loss of momentum. We have, therefore, decided that the strategic partner route offers the best potential for a transaction within 2002, offers value to the taxpayer and meets our objective of a successful public-private partnership. A strategic partner would work closely with QinetiQ and contribute significantly to growing the overall value of its business, from which the taxpayer would benefit through MOD's initial retention of a significant financial interest in the company. MOD will also retain a special share as a means of protecting UK defence and security interests. Confidential discussions with potential strategic partners will now begin, and it is expected that a preferred partner will be selected, and agreements signed, later this year.[107]

Following a competitive tendering process the MoD entered into discussions with The Carlyle Group as its preferred strategic partner in September 2002, although a contract and precise details of the sale were not released until the end of the year. On 5 December 2002 the MoD announced that the Carlyle Group would take a 33.8% share in QinetiQ, with a further 3.7% of shares available for QinetiQ employees. The MoD would retain a 62.5% stake in the business for 2-3 years after which it would be divested on the stock market.[108]

Commenting on the sale of a stake to the Carlyle Group, an article in *The Financial Times,* on 6 September 2002, suggested:

> The British government's decision to sell its defence research laboratories to a US company with significant investments in American weapons manufacturers has aroused serious concern among UK industrialists…Carlyle has investments in many industry sectors, but its chairman is Frank Carlucci, a former US defence secretary, and it has invested in several US defence manufacturers with a view to selling them on– the aim of the MoD, which will retain a large stake, is to float QinetiQ in two to four years.
>
> Carlyle floated off United Defense Industries, a maker of armoured vehicles and munitions, last year but still owns nearly half the company, which itself owns Bofors Defence of Sweden and a US naval repair company…Alan Sharman, director general of the Defence Manufacturers' Association, said members were concerned about the fairness in the bidding process. They would seek government

---

[107] HC Deb 6 March 2002, c314W

[108] Ministry of Defence Press Release, *Sale of a Stake in QinetiQ plc to the Carlyle Group,* 5 December 2002, available online at: http://news.mod.uk/news/press/news_press_notice.asp?newsItem_id=2191.

assurances that QinetiQ would not be able to advise the MoD on contracts for which other Carlyle-owned companies were bidding.[109]

a. Ownership and responsibilities

Following the establishment of QinetiQ in July 2001 the ownership of a number of MoD sites was transferred to the new company. These included a number of airfields, training areas and testing sites, which under the Agreement on the Adaptation of the CFE Treaty are defined as "declared sites".

In a Written Answer on 13 March 2002 Dr Moonie stated:

(a) The real estate properties transferred to QinetiQ are listed:

List of QinetiQ owned sites ***Name***	***Location***	***Size*** [(21)]
Aberporth[110]	Aberporth, Ceredigion	48
Alverstoke	Gosport, Hampshire	9
Angle	Pembrokeshire	19
Aquila	Bromley, Kent	10
Bedford Enclave	Clapham, Bedford	6
Bedford Tunnels	Clapham, Bedford	35
Bedford Twinwoods	Clapham, Bedford	21
Bincleaves	Weymouth, Dorset	3
Chertsey	Chertsey, Surrey	121
Christchurch[(22)]	Christchurch, Dorset	3
Cobbet Hill	Woking, Surrey	76
Farnborough Codey	Farnborough, Hampshire	149
Fort Halstead	Sevenoaks, Kent	135

[109] 'Concern over sale of defence research group', *The Financial Times*, 6 September 2002
[110] The ownership of Aberporth airfield has been transferred to QinetiQ.

Fraser	Eastney, Portsmouth, Hampshire	5
Funtington North	Chichester, West Sussex	16
Haslar[22]	Gosport, Hampshire	16
Hurn Main	Bournemouth, East Dorset	98
Hurn Barnsfield	Bournemouth, East Dorset	143
Hurn Saddleheath	Bournemouth, East Dorset	20
Hutton Moor	West Super Mare, North Somerset	6
Malvern Main Site	Malvern, Worcester	28
Malvern Science Park	Malvern, Worcester	5
Pershore	Throckmorton, Worcester	110
Portsdown LBTS	Portsmouth, Hampshire	11
Pyestock North	Farnborough, Hampshire	53
Pyestock South	Farnborough, Hampshire	34
West Drayton	Heathrow, Middlesex	2

[21] Approximate hectares
[22] These sites are a mixture of freehold and leased land.
Note:
Sizes are approximate and have been rounded.

In addition QinetiQ are leaseholders at a number of other sites.[111]

On 1 March 2002 the MoD selected QinetiQ as the preferred bidders for the 25-year contract for the management and operation of the UK's military test and evaluation ranges and aircraft test and evaluation. Under the deal the MoD retains the freehold to the sites and facilities, while QinetiQ has "a licence to use them for approved purposes

[111] HC Deb 13 March 2002, c1165W

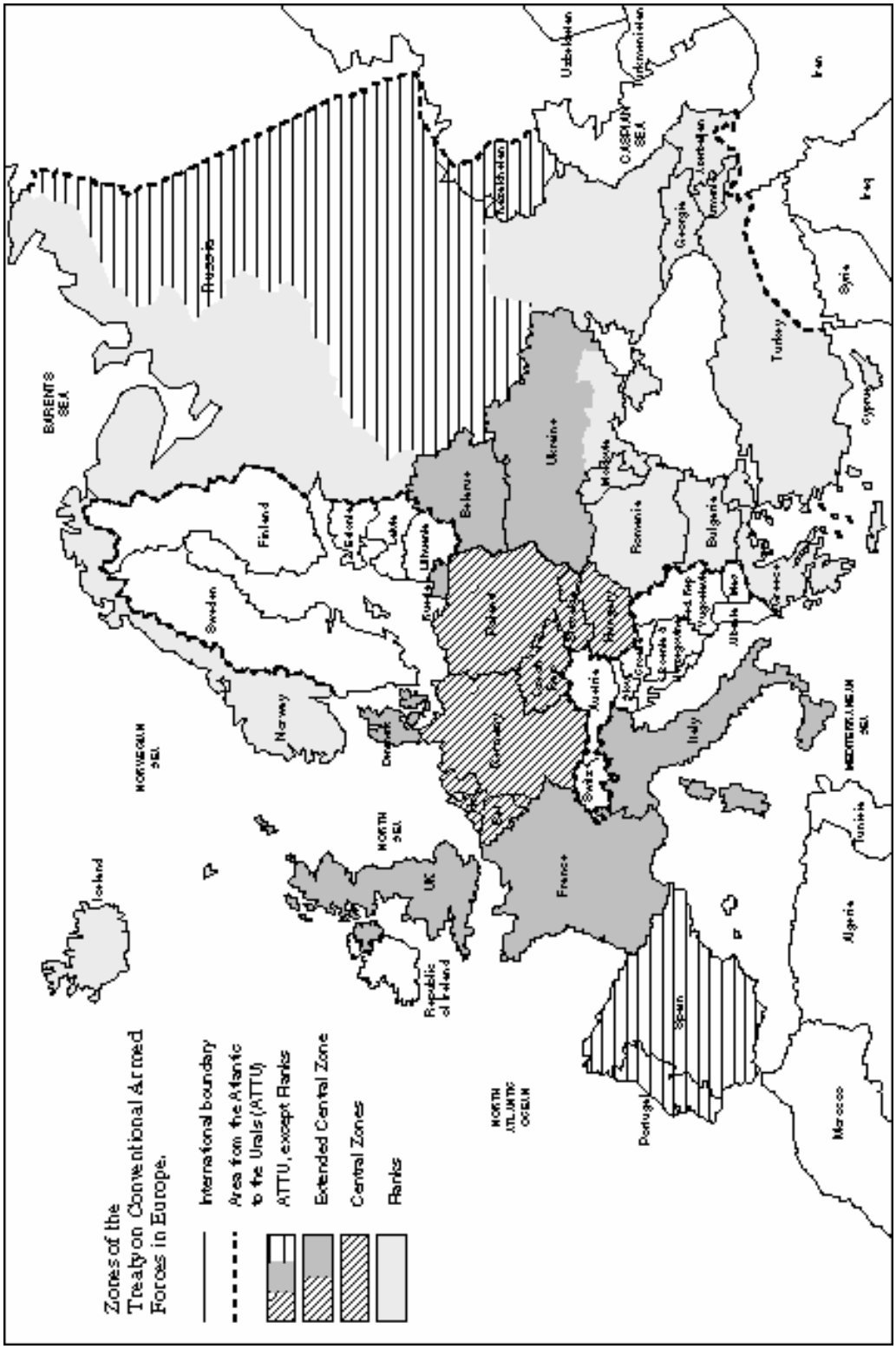
including work for the MoD, sub-contract work on behalf of UK defence prime contractors and other uses with prior consent".[112]

Those test and evaluation sites include:

- Aberporth Range, Cardigan, Ceredigion
- Boscombe Down Airfield, Salisbury, Wiltshire
- BUTEC Range, Ross-shire
- Eskmeals Range, Cumbria
- Foulness Range
- Hebrides Ranges, Isle of Benbecula, Hebrides
- Kirkcudbright, Dumfries & Galloway
- Larkhill Range, Salisbury, Wiltshire
- Llanbedr Range, Gwynedd, Llanbedr
- Pendine Range, Carmarthen
- Portland Bill, Dorset
- Plymouth, Naval Dockyard
- Rona Range, Ross-shire
- Shoeburyness Range, Southend-on-Sea, Essex
- St Thomas Head Range, Weston Super Mare, Somerset
- West Freugh Range, Stranraer, Wigtownshire
- Burntisland, Fife
- Firth of Clyde Ranges.[113]

[112] QinetiQ Press Release 1 March 2002
[113] *ibid.*

Appendix 1 – Map of the existing CFE Treaty Area



Reproduced by kind permission of the House of Commons Defence Committee.
Source: Defence Committee Twelfth Report of Session 1999-2000, *The Adaptation of the Treaty on Conventional Forces in Europe*, 2 August 2000, HC 295, available online at: http://pubs1.tso.parliament.uk/pa/cm199900/cmselect/cmdfence/295/29504.htm

Appendix 2 – Text of the 1991 Act showing proposed Bill amendments

N.B. An unofficial version of the amended text of the *Arms Control and Disarmament (Inspections) Act 1991* (chapter 41) is reproduced below, showing the additions and repeals that are proposed under the *Arms Control and Disarmament (Inspections) Bill* [HL], Bill 50 2002-03. Original text from the 1991 Act that has been repealed or replaced has been struck through. Additions proposed under the Bill are shown in italics. The Schedule to the 1991 Act, which contains an excerpt from the Protocol on Inspection to the CFE Treaty, would be omitted under the Bill and is therefore not included. The full text of the Schedule is online at:
http://www.legislation.hmso.gov.uk/acts/acts1991/Ukpga_19910041_en_3.htm

Arms Control and Disarmament (Inspections) Act 1991 (c. 41)

An Act to facilitate the carrying out in the United Kingdom of inspections under the Protocol on Inspection incorporated in the Treaty on Conventional Armed Forces in Europe signed in Paris on 19th November 1990; and for connected purposes.

[25th July 1991]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows: -

Preliminary

Interpretation etc.

~~1. (1) In this Act "the Protocol" means the Protocol on Inspection incorporated in the Treaty on Conventional Armed Forces in Europe signed in Paris on 19th November 1990.~~

1. (1) In this Act –

"the Treaty" means the Treaty on Conventional Armed Forces in Europe signed in Paris on 19th November 1990 (as amended by the Agreement adapting that Treaty signed in Istanbul on 19th November 1999);
"the Protocol" means the Protocol on Inspection incorporated in the Treaty (as substituted by article 27 of that Agreement)."

(2) In this Act –

~~(a) "challenge inspection" means an inspection conducted pursuant to Section VIII of the Protocol (challenge inspections within specified areas);~~
(b) "inspector" has the meaning given by Section I of the Protocol (definitions); and
(c) (subject to subsection (3) below) "escort team" , ~~"inspection team" and "specified area" shall be construed, in relation to any challenge inspection~~ *and "inspection team" shall be construed, in relation to any inspection*, in accordance with that Section.

(3) In this Act –

(a) any reference to an escort team includes a reference to an escort team in which any liaison officer is included pursuant to paragraph 2 of Section V of the Protocol (procedures upon arrival at point of entry and exit); and
(b) any reference to an inspection team includes a reference to an inspection team in which any inspector is included pursuant to ~~paragraph 1 of~~ Section VI of the Protocol (general rules for conducting inspections).

~~(4) For ease of reference the following provisions of the Protocol are set out in the Schedule to this Act, namely –~~

~~(a) certain definitions contained in Section I; and~~
~~(b) Section VI.~~

~~Challenge~~ *Inspections*

Rights of entry etc. for purposes of ~~challenge inspections under~~ *inspections pursuant to Sections VII, VIII and IX of* the Protocol.

2. (1) Where a request to conduct ~~a challenge inspection within any specified area~~ *an inspection pursuant to Section VIII of the Protocol (challenge inspections within a specified area)* in the United Kingdom –

(a) has been made under the Protocol, and
(b) has been granted by Her Majesty's Government in the United Kingdom,

the Secretary of State may issue an authorisation under this section in respect of that inspection.

(1A) The Secretary of State may also issue an authorisation under this section in respect of an inspection which it is proposed to conduct pursuant to –

(a) Section VII of the Protocol (declared site inspections), or
(b) Section IX of the Protocol (inspections in a designated area).

(2) An authorisation under this section shall contain a description of the ~~specified area~~ *area to be inspected pursuant to the relevant Section of the Protocol* and state the names of the members of the inspection team by whom the inspection is to be carried out.

(3) Such an authorisation shall have the effect of authorising the inspection team -

(a) to exercise within the ~~specified area~~ *area in respect of which the authorisation is issued* such rights of access, entry and unobstructed inspection as are conferred on them by Section VI of the Protocol, and
(b) to do such other things within that area in connection with the conduct of the inspection as they are entitled to do by virtue of that Section.

(4) Such an authorisation shall in addition have the effect of –

(a) authorising an escort team to accompany the inspection team at all times, and
(b) authorising any constable to give such assistance as the person in command of the escort team may request for the purpose of facilitating the conduct of the inspection in accordance with Section VI of the Protocol;

and the name of the person in command of the escort team shall be stated in the authorisation.

(5) Where the inspection team is divided into sub-teams in accordance with ~~paragraph 2~~ *paragraph 4 or 5* of Section VI of the Protocol –

(a) subsection (3) shall apply to each of the sub-teams as it applies to the inspection team as a whole, and
(b) subsection (4)(a) shall be construed as authorising members of the escort team to accompany each of the sub-teams.

(6) Any constable giving assistance in accordance with subsection (4)(b) may use such reasonable force as he considers necessary for the purpose mentioned in that provision.

(7) The occupier of any premises –

> (a)in relation to which it is proposed to exercise a right of entry in reliance on an authorisation under this section, or
> (b) on which an inspection is being carried out in reliance on such an authorisation,

or a person acting on behalf of the occupier of any such premises, shall be entitled to require a copy of the authorisation to be shown to him by a member of the escort team.

(8) The validity of any authorisation purporting to be issued under this section in respect of any ~~challenge~~ inspection shall not be called in question in any court of law at any time before the conclusion of that inspection; and accordingly no proceedings (of whatever nature) shall be brought at any time before the conclusion of any ~~challenge~~ inspection if they would, if successful, have the effect of preventing, delaying or otherwise affecting the carrying out of any such inspection.

(9) If in any proceedings any question arises whether a person at any time was or was not, in relation to any ~~challenge~~ inspection, a member of the inspection team or (as the case may be) a member of the escort team, a certificate issued by or under the authority of the Secretary of State stating any fact relating to that question shall be conclusive evidence of that fact.

Offences.

3. (1) Where an authorisation has been issued under section 2 in respect of any ~~challenge~~ inspection, any person who –

> (a) refuses to comply with any request made by any constable for the purpose of facilitating the conduct of that inspection in accordance with Section VI of the Protocol, or
> (b) wilfully obstructs any member of the inspection team or of the escort team in the conduct of that inspection in accordance with that Section,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding the third level on the standard scale.

(2) Where an offence under this section is committed by a body corporate and is proved to have been committed with the consent or connivance of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

In relation to a body corporate whose affairs are managed by its members, "director" means a member of the body corporate.

(3) Where an offence under this section is committed in Scotland by a Scottish partnership and is proved to have been committed with the consent or connivance of a partner, he as well as the partnership shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Exercise of powers in relation to Crown land in private occupation.

4. (1) The powers exercisable in the case of any authorisation by virtue of section 2 shall be exercisable in relation to any Crown land only to the extent that it is land which any person is entitled to occupy by virtue of a private interest (whether it is an interest in land or arises under a licence).

(2) In subsection (1) –

"Crown land" means land in which there is a Crown interest or a Duchy interest; and
"private interest" means an interest which is neither a Crown interest nor a Duchy interest;

and for this purpose –

"Crown interest" means an interest –

(a) belonging to Her Majesty in right of the Crown (including the Crown in right of Her Majesty's Government in Northern Ireland), or
(b) belonging to a government department or Northern Ireland department,

or an interest held in trust for Her Majesty for the purposes of any such department; and

"Duchy interest" means an interest belonging to Her Majesty in right of the Duchy of Lancaster or belonging to the Duchy of Cornwall.

Privileges and immunities

Privileges and immunities of inspectors and transport crew members in connection with inspections under the Protocol.

5. (1) Inspectors and transport crew members shall enjoy the same privileges and immunities as are enjoyed by diplomatic agents in accordance with the following provisions of the 1961 Articles, namely -

(a) Article 29,
(b) paragraph 2 of Article 30,
(c) paragraphs 1, 2 and 3 of Article 31, and
(d) Articles 34 and 35.

(2) Such persons shall, in addition, enjoy the same privileges as are enjoyed by diplomatic agents in accordance with paragraph 1(b) of Article 36 of the 1961 Articles, except in relation to articles the importing or exporting of which is prohibited by law or controlled by the enactments relating to quarantine.

(3) Subject to subsection (4), the privileges and immunities accorded to inspectors and transport crew members by virtue of this section –

(a)shall be enjoyed by them at any time when they are in the United Kingdom –

(i) in connection with the carrying out of an inspection there pursuant to any provision of the Protocol, or
(ii) while in transit to or from the territory of another State Party in connection with the carrying out of such an inspection there; and

(b) shall also be enjoyed by them at any time with respect to acts previously performed in the exercise of official functions as an inspector or a transport crew member.

(4) The immunity from jurisdiction enjoyed by an inspector or a transport crew member by virtue of subsection (1)(c) shall cease to be so enjoyed if expressly waived by the State Party of which he is a national.

(5) Any means of transport –

(a) used by inspectors to travel to or from the United Kingdom in connection with the carrying out of an inspection pursuant to any provision of the Protocol (whether in the United Kingdom or elsewhere), and

(b) specifically provided for such use by, or by arrangement with, any State Party,

shall be inviolable.

(6) If in any proceedings any question arises whether a person is or is not entitled to any privilege or immunity by virtue of this section, a certificate issued by or under the authority of the Secretary of State stating any fact relating to that question shall be conclusive evidence of that fact.

(7) In this section –

"the 1961 Articles" means the Articles which are set out in Schedule 1 to the [1964 c. 81.] Diplomatic Privileges Act 1964 (Articles of Vienna Convention on Diplomatic Relations of 1961 having force of law in United Kingdom);

"enactment" includes an enactment comprised in subordinate legislation (within the meaning of the [1978 c. 30.] Interpretation Act 1978);

"State Party" has the same meaning as in the Treaty referred to in section 1(1) above;

"transport crew member" has the meaning given by Section I of the Protocol.

Supplementary

Short title, commencement and extent.

6. (1) This Act may be cited as the Arms Control and Disarmament (Inspections) Act 1991.

(2) Except for this section, this Act shall come into force on such day as the Secretary of State may appoint by order made by statutory instrument.

(3) This Act extends to Northern Ireland.

(4) Her Majesty may by Order in Council provide for this Act to extend to any of the following territories, namely –

(a) the Isle of Man,
(b) any of the Channel Islands,
(c) Gibraltar, or
(d) the Sovereign Base Areas of Akrotiri and Dhekelia (that is to say, the areas mentioned in section 2(1) of the [1960 c. 52.] Cyprus Act 1960),

with such modifications as appear to Her Majesty to be appropriate.